

IN THE CLAIMS:

Please amend claim 8 as follows:

8. (Twice Amended) A rail track comprising at least one rail supported by a non-compressible, concrete base body, with the base body provided with a channel-like recess for receiving the rail such that a running surface of a head of the received rail lies free, with a bottom of the channel-like recess provided with a first layer of yielding material which extends under a bearing surface of a foot of the rail, with rail side surfaces between the running surface and the bearing surface of the rail covered with a second layer of yielding material, wherein the bottom of the channel-like recess fully supports the rail and side walls of the channel-like recess are parallel and wherein the first layer of yielding material is separate from the second layer of yielding material.

REMARKS

This Amendment is accompanied by a petition for Extension of Time requesting one-month until June 21, 2001 in which to file a response to the outstanding Office Action.

This Amendment is being submitted after a Final Rejection, however, it is believed the amendment to claim 8 will place the case in condition for allowance and entry of this amendment is respectfully requested.

Claims 8-14 remain in this application. Claim 8 has been amended and claims 9-14 remain unchanged. No new subject matter is believed to have been added by this Amendment.

Attached hereto are pages showing the changes made to the specification and claims by the current Amendment. The attached pages are captioned "Attachment A with Revision Marks".

In Section No. 2 of the Office Action, the Examiner rejects claims 8, 10-12 and 14 under 35 U.S.C. § 102(b) as being anticipated by the teaching of PCT International Publication No. WO 91/10778 to Hodgson (the Hodgson publication).

The Applicant has studied the analysis provided by the Examiner of the Hodgson patent on page 2 of the Office Action and believes the last five lines in the paragraph providing that analysis are erroneous. There is no second layer numbered (24), there is no non-compressible material (17) and there are no columns 1-4, lines 1-68 in the Hodgson publication.

Nevertheless, the Hodgson publication is directed to a tram track, wherein a rail (3) is supported by an elastomeric polymeric grouting compound or glue (8) which provides a compressible base body. The compound (8) surrounds the rail (3) and rests upon a resilient pad 7. The Hodgson patent is specifically addressed in the subject application on page 2, lines 11-19 where it is stated that casting flexible material not only provides a casting mass, which acts as a reflector for the sound radiated by the rail, but also indicating that the casting mass begins to function as an extra source of noise. Furthermore, such a design requires a large volume of expensive polymer material.

Claim 8 of the application has been amended to specify that the first layer of yielding material, which extends under a bearing surface of a foot of the rail, is separate from the second layer of yielding material, which covers the rail side surfaces between the running surface and the bearing surface of the rail. In this fashion, it is possible to more selectively support the rail, such that, not only may the first and second layer be of different materials, but the stiffness of the first and second layers may be different. As stated on page 3, lines 16-26 of the present application, the stiffness in the vertical direction is bounded by the regulation of the railway companies, while the stiffness in the horizontal direction is bounded only by the fact that this layer must be able to shear sufficiently to allow the vertical displacement. Therefore, claim 8 as

amended is not believed to be anticipated or made obvious by the teachings of the Hodgson publication. Furthermore, claims 10-12 and 14 are dependent upon claim 8, and therefore are also believed not to be anticipated or made obvious by the teaching of the Hogdson patent.

In Section No. 3, the Examiner rejects claims 8, 9 and 14 under 35 U.S.C. § 102(b) as being anticipated by the teaching of United States Patent No. 5,165,598 to Ortwein (the Ortwein patent). There are a number of distinctions between the resiliently mounted rail disclosed in the Ortwein patent and the subject invention. First of all, the channel-like recess as disclosed in the Ortwein patent is not a concrete base body with a recess as claimed in Applicant's claim 1, but instead is mounted within a frame 6 which, based upon the cross hatching in Figures 1 and 2 of the Ortwein patent, appears to be made of steel. As such, the frame 6 is flexible in the lateral direction and operates in conjunction with the elastic intermediate layer 4.

The design in the Ortwein patent has additional differences. In particular, the layer of yielding material on the bottom of the rail 1 in the Ortwein patent is the same as the layer of yielding material on the side of the rail. The materials are not separate. Directing attention to Figure 7 of the Ortwein patent, it appears the elastic intermediate layer 4.B is separate from a layer at the base of the rail 1.A. However, there is no discussion of this detail, nor is it clear that the rail 1 ever engages the material beneath the base of the rail 1.A. Furthermore, unlike the Applicant's invention, where as specified in claim 1 the side walls of the channel-like recess are parallel, the device in the Ortwein patent is significantly different in that the walls are irregularly shaped so that the elastic material 4.B may provide not only lateral support, but also vertical support to the rail 1.A. For these reasons, the Applicant does not believe that claim 8 as amended is anticipated or made obvious by the teaching of the Ortwein patent. Furthermore, claims 9 and 14 depend from claim 8, and for that reason are themselves believed not to be anticipated or

made obvious by the teaching of the Ortwein patent.

In Section 4, the Examiner rejects claims 8, 9, 13 and 14 under 35 U.S.C. § 102(b) as being anticipated by the teaching of United States Patent No. 5,513,797 to Lesley (the Lesley patent). The Lesley patent is directed to the installation of rail tracks and roadways, whereby, a rail 11 is placed in a recess 12 and then surrounded by a resilient material 18. As previously mentioned, claim 1 has been amended to specify that the first layer of yielding material is separate from the second layer of yielding material. The resilient material 18 disclosed in the Lesley patent acts as both the first layer and second layer and, as apparent from inspection of Figure 1, these two layers are not separate from one another. For these reasons, the Applicant does not believe that claim 8, as amended to clarify separate layers, is anticipated or made obvious by the teaching of the Lesley patent. Furthermore, claims 9, 13 and 14, which depend from claim 8 are also not believed to be anticipated or made obvious by the teaching of the Lesley patent.

In view of the foregoing, it is believed that claims 8-14, as amended, are patentable over the prior art of record. Reconsideration of the rejections and allowance of claims 8-14 are respectfully requested.

Respectfully submitted,

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ATTACHMENT A WITH REVISION MARKS

Please amend claim 8 as follows:

8. (Twice Amended) A rail track comprising at least one rail supported by a non-compressible, concrete base body, with the base body provided with a channel-like recess for receiving the rail such that a running surface of a head of the received rail lies free, with a bottom of the channel-like recess provided with a first layer of yielding material which extends under a bearing surface of a foot of the rail, with rail side surfaces between the running surface and the bearing surface of the rail covered with a second layer of yielding material, wherein the bottom of the channel-like recess fully supports the rail and side walls of the channel-like recess are parallel and wherein the first layer of yielding material is separate from the second layer of yielding material.